

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Aug 11, 2022**

SEAN F. McAVOY, CLERK

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

CARMEN V.,<sup>1</sup>

Plaintiff,

v.

KILOLO KIJAKAZI, ACTING  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>2</sup>

Defendant.

No. 4:20-cv-05167-MKD

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

**ECF Nos. 17, 18**

<sup>1</sup> To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

<sup>2</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

1 Before the Court are the parties' cross-motions for summary judgment. ECF  
2 Nos. 17, 18. The Court, having reviewed the administrative record and the parties'  
3 briefing, is fully informed. For the reasons discussed below, the Court grants  
4 Plaintiff's motion, ECF No. 17, and denies Defendant's motion, ECF No. 18.

### 5 JURISDICTION

6 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);  
7 1383(c)(3).

### 8 STANDARD OF REVIEW

9 A district court's review of a final decision of the Commissioner of Social  
10 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
11 limited; the Commissioner's decision will be disturbed "only if it is not supported  
12 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,  
13 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a  
14 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159  
15 (quotation and citation omitted). Stated differently, substantial evidence equates to  
16 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and  
17 citation omitted). In determining whether the standard has been satisfied, a  
18 reviewing court must consider the entire record as a whole rather than searching  
19 for supporting evidence in isolation. *Id.*

1 In reviewing a denial of benefits, a district court may not substitute its  
2 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,  
3 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one  
4 rational interpretation, [the court] must uphold the ALJ’s findings if they are  
5 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674  
6 F.3d 1104, 1111 (9th Cir. 2012), *superseded by regulation on other grounds*.  
7 Further, a district court “may not reverse an ALJ’s decision on account of an error  
8 that is harmless.” *Id.* An error is harmless “where it is inconsequential to the  
9 [ALJ’s] ultimate nondisability determination.” *Id.* at 1115 (quotation and citation  
10 omitted). The party appealing the ALJ’s decision generally bears the burden of  
11 establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

### 12 **FIVE-STEP EVALUATION PROCESS**

13 A claimant must satisfy two conditions to be considered “disabled” within  
14 the meaning of the Social Security Act. First, the claimant must be “unable to  
15 engage in any substantial gainful activity by reason of any medically determinable  
16 physical or mental impairment which can be expected to result in death or which  
17 has lasted or can be expected to last for a continuous period of not less than twelve  
18 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s  
19 impairment must be “of such severity that he is not only unable to do his previous  
20 work[,] but cannot, considering his age, education, and work experience, engage in

1 any other kind of substantial gainful work which exists in the national economy.”

2 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

3       The Commissioner has established a five-step sequential analysis to  
4 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
5 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner  
6 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),  
7 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the  
8 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
9 404.1520(b), 416.920(b).

10       If the claimant is not engaged in substantial gainful activity, the analysis  
11 proceeds to step two. At this step, the Commissioner considers the severity of the  
12 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the  
13 claimant suffers from “any impairment or combination of impairments which  
14 significantly limits [his or her] physical or mental ability to do basic work  
15 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),  
16 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,  
17 however, the Commissioner must find that the claimant is not disabled. *Id.*

18       At step three, the Commissioner compares the claimant’s impairment to  
19 severe impairments recognized by the Commissioner to be so severe as to preclude  
20 a person from engaging in substantial gainful activity. 20 C.F.R. §§

1 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more  
2 severe than one of the enumerated impairments, the Commissioner must find the  
3 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

4 If the severity of the claimant's impairment does not meet or exceed the  
5 severity of the enumerated impairments, the Commissioner must pause to assess  
6 the claimant's "residual functional capacity." Residual functional capacity (RFC),  
7 defined generally as the claimant's ability to perform physical and mental work  
8 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§  
9 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the  
10 analysis.

11 At step four, the Commissioner considers whether, in view of the claimant's  
12 RFC, the claimant is capable of performing work that he or she has performed in  
13 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).  
14 If the claimant is capable of performing past relevant work, the Commissioner  
15 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).  
16 If the claimant is incapable of performing such work, the analysis proceeds to step  
17 five.

18 At step five, the Commissioner considers whether, in view of the claimant's  
19 RFC, the claimant is capable of performing other work in the national economy.  
20 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,

1 the Commissioner must also consider vocational factors such as the claimant's age,  
2 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
3 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the  
4 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
5 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other  
6 work, analysis concludes with a finding that the claimant is disabled and is  
7 therefore entitled to benefits. *Id.*

8 The claimant bears the burden of proof at steps one through four above.  
9 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to  
10 step five, the burden shifts to the Commissioner to establish that 1) the claimant is  
11 capable of performing other work; and 2) such work "exists in significant numbers  
12 in the national economy." 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*  
13 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

#### 14 **ALJ'S FINDINGS**

15 On May 26, 2018, Plaintiff applied both for Title II disability insurance  
16 benefits and Title XVI supplemental security income benefits alleging a disability  
17 onset date of April 28, 2018. Tr. 15, 84, 95, 234-47. The applications were denied  
18 initially and on reconsideration. Tr. 120-28, 131-44. Plaintiff appeared before an  
19 administrative law judge (ALJ) on November 5, 2019. Tr. 33-73. On November  
20 15, 2019, the ALJ denied Plaintiff's claim. Tr. 12-32.

1 At step one of the sequential evaluation process, the ALJ found Plaintiff,  
2 who met the insured status requirements through June 30, 2023, has not engaged in  
3 substantial gainful activity since April 28, 2018. Tr. 17. At step two, the ALJ  
4 found that Plaintiff has a severe mental impairment, conversion disorder. *Id.*

5 At step three, the ALJ found Plaintiff does not have an impairment or  
6 combination of impairments that meets or medically equals the severity of a listed  
7 impairment. Tr. 18-19. The ALJ then concluded that Plaintiff has the RFC to  
8 perform a full range of work at all exertional levels but with the following  
9 nonexertional limitations:

10 [Plaintiff] cannot do tasks that require depth perception or precise visual  
11 acuity (e.g., threading a needle, reading print smaller than regular newsprint,  
12 and driving a car); and he can have no exposure to hazards (e.g., unprotected  
heights, moving mechanical parts).

13 Tr. 20.

14 At step four, the ALJ found Plaintiff is unable to perform any past relevant  
15 work. Tr. 24. At step five, the ALJ found that, considering Plaintiff's age,  
16 education, work experience, RFC, and testimony from the vocational expert, there  
17 were jobs that existed in significant numbers in the national economy that Plaintiff  
18 could perform, such as, dining room attendant, laundry worker II, and industrial  
19 cleaner. Tr. 25.  
20

1 Therefore, the ALJ concluded Plaintiff was not under a disability, as defined  
2 in the Social Security Act, from the alleged onset date of April 28, 2018, through  
3 the date of the decision. *Id.*

4 On July 23, 2020, the Appeals Council denied review of the ALJ's decision,  
5 Tr. 1-6, making the ALJ's decision the Commissioner's final decision for purposes  
6 of judicial review. *See* 42 U.S.C. § 1383(c)(3).

### 7 ISSUES

8 Plaintiff seeks judicial review of the Commissioner's final decision denying  
9 him disability insurance benefits under Title II and supplemental security income  
10 benefits under Title XVI of the Social Security Act. Plaintiff raises the following  
11 issues for review:

- 12 1. Whether the ALJ properly evaluated the medical opinion evidence;
- 13 2. Whether the ALJ properly evaluated Plaintiff's symptom claims; and
- 14 3. Whether the ALJ conducted a proper step-three analysis.

15 ECF No. 17 at 2.<sup>3</sup>

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19 <sup>3</sup> The Court references the ECF page numbers imposed on the top center of the  
20 pleading as opposed to the page numbers listed on the bottom of the pleading.



## DISCUSSION

### A. Medical Opinion Evidence

Plaintiff contends the ALJ erred in weighing the opinions of Lynne Jahnke, M.D.; Daniel Hanson, M.D.; Marja Adair, ARNP; and Mary Pine, PA-C. ECF No. 17 at 15-21.

As an initial matter, for claims filed on or after March 27, 2017, new regulations apply that change the framework for how an ALJ must evaluate medical opinion evidence. *Revisions to Rules Regarding the Evaluation of Medical Evidence*, 2017 WL 168819, 82 Fed. Reg. 5844-01 (Jan. 18, 2017); 20 C.F.R. §§ 404.1520c, 416.920c. The new regulations provide that the ALJ will no longer “give any specific evidentiary weight . . . to any medical opinion(s) . . .” *Revisions to Rules*, 2017 WL 168819, 82 Fed. Reg. 5844, at 5867-68; *see* 20 C.F.R. §§ 404.1520c(a), 416.920c(a). Instead, an ALJ must consider and evaluate the persuasiveness of all medical opinions or prior administrative medical findings from medical sources. 20 C.F.R. §§ 404.1520c(a) and (b), 416.920c(a) and (b). The factors for evaluating the persuasiveness of medical opinions and prior administrative medical findings include supportability, consistency, relationship with the claimant (including length of the treatment, frequency of examinations, purpose of the treatment, extent of the treatment, and the existence of an examination), specialization, and “other factors that tend to support or contradict a

1 medical opinion or prior administrative medical finding” (including, but not  
2 limited to, “evidence showing a medical source has familiarity with the other  
3 evidence in the claim or an understanding of our disability program’s policies and  
4 evidentiary requirements”). 20 C.F.R. §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5).

5 Supportability and consistency are the most important factors, and therefore  
6 the ALJ is required to explain how both factors were considered. 20 C.F.R. §§  
7 404.1520c(b)(2), 416.920c(b)(2). Supportability and consistency are explained in  
8 the regulations:

9 (1) *Supportability*. The more relevant the objective medical evidence  
10 and supporting explanations presented by a medical source are to  
11 support his or her medical opinion(s) or prior administrative medical  
finding(s), the more persuasive the medical opinions or prior  
administrative medical finding(s) will be.

12 (2) *Consistency*. The more consistent a medical opinion(s) or prior  
13 administrative medical finding(s) is with the evidence from other  
14 medical sources and nonmedical sources in the claim, the more  
persuasive the medical opinion(s) or prior administrative medical  
finding(s) will be.

15 20 C.F.R. §§ 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2). The ALJ may, but is not  
16 required to, explain how the other factors were considered. 20 C.F.R. §§  
17 404.1520c(b)(2), 416.920c(b)(2). However, when two or more medical opinions  
18 or prior administrative findings “about the same issue are both equally well-  
19 supported . . . and consistent with the record . . . but are not exactly the same,” the  
20 ALJ is required to explain how “the other most persuasive factors in paragraphs

(c)(3) through (c)(5)” were considered. 20 C.F.R. §§ 404.1520c(b)(3), 416.920c(b)(3).

The Ninth Circuit recently addressed the issue of whether the changes to the regulations displace the longstanding case law requiring an ALJ to provide specific and legitimate reasons to reject an examining provider’s opinion. *Woods v. Kijakazi*, No. 21-35458, 2022 WL 1195334, at \*3 (9th Cir. Apr. 22, 2022). The Court held that the new regulations eliminate any hierarchy of medical opinions, and the specific and legitimate standard no longer applies. *Id.* at \*3-4. The Court reasoned the “relationship factors” remain relevant under the new regulations, and thus the ALJ can still consider the length and purpose of the treatment relationship, the frequency of examinations, the kinds and extent of examinations that the medical source has performed or ordered from specialists, and whether the medical source has examined the claimant or merely reviewed the claimant's records. *Id.* at \*6. However, the ALJ is not required to make specific findings regarding the relationship factors. *Id.* Even under the new regulations, an ALJ must provide an explanation supported by substantial evidence when rejecting an examining or treating doctor’s opinion as unsupported or inconsistent. *Id.*

*1. Lynn Jahnke, M.D.*

On November 5, 2019, Dr. Jahnke, a testifying medical expert, provided an opinion on Plaintiff’s conditions. Tr. 37-47. Dr. Jahnke reviewed Plaintiff’s

1 medical records contained in the record. *Id.* Dr. Jahnke stated that Plaintiff  
2 suffered from “a little bit of thoracic scoliosis,” “a little bit of left eye dryness,” “a  
3 little bit of glaucoma, treated,” all of which were non-severe, and “a little problem  
4 with the tear-producing area in the . . . left eye,” and “perhaps . . . a conversion  
5 disorder.” Tr. 37-39, 42. Dr. Jahnke testified that the evidence supports a  
6 “somatoform-type disorder,” Tr. 45, and remarked that “that he tends to have lots  
7 of symptoms with very little on physical exam.” Tr. 38. When asked whether the  
8 conversion disorder was a medically determinable impairment, Dr. Jahnke did not  
9 provide a definitive conclusion because it was outside her area of expertise,  
10 indicating she was not “really competent to say that” and she would “defer that to a  
11 psychologist.” Tr. 45. However, Dr. Jahnke testified she felt “competent” to  
12 testify in this case, because the examinations were “normal, normal, normal” and  
13 “fairly straightforward from a physiological standpoint.” Tr. 46. Dr. Jahnke  
14 opined that there was nothing physiological that was “reasonably related to his  
15 symptoms.” Tr. 38.

16 Plaintiff argues the ALJ erred in his analysis of Dr. Jahnke’s opinion. ECF  
17 No. 17 at 20-21. The ALJ stated Dr. Jahnke testified “the claimant’s 10/10 pain  
18 was inconsistent with his consistently being able to sit in no apparent distress  
19 during physical examination.” Tr. 22. However, Dr. Jahnke testified that  
20 Plaintiff’s pain was a 10 out of 10, despite the fact that he was sitting comfortably

1 and had a normal gait and noted “he tends to have lots of symptoms with very little  
2 on physical exam,” and thus “he certainly may have either a conversion or a  
3 somatoform disorder.” Tr. 38. Dr. Jahnke did not opine that Plaintiff was  
4 malingering or exaggerating his symptoms.

5 Throughout the decision, the ALJ similarly found that Plaintiff’s symptoms  
6 did not match the objective evidence and used this analysis to reject Plaintiff’s  
7 symptom claims and medical opinions. Tr. 20-23. The ALJ stated that the  
8 discrepancies between the symptoms and observed behavior could not be  
9 explained by conversion disorder, but rather demonstrated exaggeration. Tr. 21.

10 However, the ALJ cited to a record where the provider stated there was “High false  
11 negatives, possibly supporting functional/malingering theory on unqualified vision  
12 loss.” Tr. 489. Functional vision loss is a vision impairment that is psychological  
13 based. *Brewer v. Colvin*, No. C15-5703-JCC-BAT, 2016 WL 3251995, at \*3  
14 (W.D. Wash. June 14, 2016). Thus, the provider’s note indicates that the  
15 examination could support either conversion disorder or symptom exaggeration.

16 The ALJ also cited to an examination that documented “numerous positive  
17 Waddell’s tests and nonorganic findings.” Tr. 395-97. Waddell’s signs can  
18 demonstrate either malingering or conversion disorder. *See Nonorganic Physical*  
19 *Findings (Waddell Signs)*, *ENCYCLOPEDIA OF PAIN*, 2007, available at  
20 [https://doi.org/10.1007/978-3-540-29805-2\\_2816](https://doi.org/10.1007/978-3-540-29805-2_2816) (last accessed July 1, 2022). The

1 ALJ also cited to multiple examinations where the physical examination was not  
2 consistent with the reported symptoms. Tr. 21. However, it is consistent for an  
3 individual with reportedly impaired vision due to a conversion disorder to have  
4 normal examinations and inconsistencies between their reported limitations and the  
5 examination. *See Conversion Disorder in Neuro-Ophthalmology*, available at  
6 [https://eyewiki.aao.org/Conversion\\_Disorder\\_in\\_Neuro-Ophthalmology](https://eyewiki.aao.org/Conversion_Disorder_in_Neuro-Ophthalmology) (last  
7 accessed July 1, 2022); *see also Nowling v. Colvin*, 813 F.3d 1110, 1113-14 (8th  
8 Cir. 2016).

9 An ALJ may not act as his own medical expert, since he is “simply not  
10 qualified to interpret raw medical data in functional terms.” *Nguyen v. Chater*, 172  
11 F.3d 31, 35 (1st Cir. 1999); *see Day v. Weinberger*, 522 F.2d 1154, 1156 (9th Cir.  
12 1975) (hearing examiner should not go outside the record to medical textbooks to  
13 make his “own exploration and assessment” as to a claimant’s impairments);  
14 *Rohan v. Chater*, 98 F.3d 966, 970 (7th Cir. 1996) (“ALJs must not succumb to the  
15 temptation to play doctor and make their own independent medical findings.”). Dr.  
16 Jahnke did not opine that Plaintiff’s examinations demonstrate exaggeration.  
17 Rather, the ALJ has improperly interpreted the medical evidence and found  
18 multiple pieces of evidence demonstrate symptom exaggeration, despite the fact  
19 that the evidence can demonstrate either conversion disorder or symptom  
20 exaggeration. The ALJ offers his own determination that the discrepancies

1 demonstrate exaggeration and not conversion disorder, but the ALJ's  
2 determination is not supported by substantial evidence.

3 The ALJ's error in acting as his own medical expert is compounded by the  
4 lack of any psychological opinions rendered in this case. The ALJ found  
5 Plaintiff's only severe impairment is conversion disorder. Tr. 17. Dr. Jahnke  
6 testified that the appropriate specialist to opine on a conversion disorder would be  
7 a psychiatrist or psychologist. Tr. 42-45. Plaintiff requested that the ALJ order a  
8 psychiatric consultative examination, which the ALJ stated he would take under  
9 consideration. *See* Tr. 72. However, the ALJ did not order a consultative  
10 examination and does not offer a reason why it was not ordered. Tr. 15-26.

11 No psychologist or psychiatrist has examined Plaintiff, reviewed his records,  
12 nor rendered an opinion on his functioning. At the initial and reconsideration  
13 levels, Plaintiff had not yet been diagnosed with conversion disorder, and thus a  
14 State agency psychologist did not review his case. *See* Tr. 85-94, 96-105. After  
15 Dr. Egan, a neurologist, diagnosed Plaintiff with conversion disorder in November  
16 2018, Tr. 623-25, Plaintiff was never seen by a psychologist or psychiatrist. An  
17 ophthalmologist, rather than a psychologist or psychiatrist, examined Plaintiff and  
18 reviewed his records for his labor and industry claim. Tr. 837. The  
19 ophthalmologist stated conversion disorder is beyond his expertise and he cannot  
20 comment on it, but that the effects of the conversion disorder should be

1 investigated. Tr. 830. At the hearing, Dr. Jahnke, who is an internist and not a  
2 psychologist or psychiatrist, was called to testify, and she also stated conversion  
3 disorder is beyond her expertise and she cannot opine on it. Tr. 39, 44-45.  
4 Plaintiff was seen for a counseling intake by a mental health counselor, but he  
5 reported an eye injury that has caused an eye impairment and did not disclose his  
6 conversion disorder diagnosis; thus, the counselor did not address the diagnosis.  
7 Tr. 912-18, 923. Plaintiff discussed with the counselor that he has a fear of losing  
8 his eye and discussed the possibility of getting a glass eye to alleviate his eye pain.  
9 Tr. 923, 929. The counselor did not perform a full psychological evaluation, and  
10 Plaintiff has not been seen by any other providers for psychological treatment.

11 The Social Security Administration has recognized the importance of having  
12 a psychologist review cases in which the claimant has been diagnosed with a  
13 mental impairment. At the State agency level, when the claimant has a mental  
14 impairment, adjudicators are required to make every reasonable effort to ensure a  
15 psychological consultant completes the medical portion of the case review and any  
16 applicable residual functional capacity assessment. 20 C.F.R. §§ 404.1617,  
17 416.1017. While Single Decision Makers have been allowed to resolve physical  
18 claims without a medical consultant's signature, the regulations require that even  
19 Single Decision Makers make every reasonable effort to have a psychological  
20 consultant complete the medical portion of the case and any applicable residual



1 functional capacity assessment, whenever the claimant has a mental impairment.

2 20 C.F.R. §§ 404.906, 416.1406.

3       The ALJ erred in finding Plaintiff's conversion disorder to be a severe  
4 impairment, and finding Dr. Jahnke's opinion persuasive, yet rejecting Plaintiff's  
5 request for a psychological consultative examination without explanation, when a  
6 medical provider and testifying medical expert stated they could not opine on the  
7 issue, a psychologist or psychiatrist would be the appropriate specialist to address  
8 the issue, and further investigation into the issue was warranted. On remand, the  
9 ALJ is instructed to reconsider Dr. Jahnke's opinion. The ALJ should also obtain  
10 an opinion from a qualified expert, through a psychological consultative  
11 examination and/or testimony from a psychological or psychiatric expert, on  
12 Plaintiff's severe mental impairment(s), whether Plaintiff's impairment(s) meet or  
13 equal a listing, and Plaintiff's RFC. The ALJ should consider asking a medical  
14 expert's opinion on whether the evidence supports a finding that Plaintiff  
15 exaggerated his symptoms or whether the evidence demonstrates inconsistencies  
16 that are due to conversion disorder.

17       2. *Daniel Hanson, M.D.*

18       On April 11, 2019, Plaintiff had an independent medical evaluation  
19 conducted by an ophthalmologist, Dr. Hanson, who provided an opinion on  
20 Plaintiff's condition. Tr. 827-31. Dr. Hanson found that Plaintiff's symptoms "do

1 appear to be much more severe than expected given the mild findings on exam,”  
2 however due to functional vision loss related to a conversion disorder, “it would be  
3 expected that the physical could be normal or near normal despite much greater  
4 loss in function.” Tr. 829. Dr. Hanson opined “from a strictly ocular perspective,  
5 Plaintiff should be able to work . . . although the lack of stereo vision may make  
6 some situations more dangerous.” Tr. 830. Dr. Hanson acknowledged the  
7 conversion disorder was “beyond [his] expertise,” and thus would not comment on  
8 the extent, etiology, or prognosis of Plaintiff’s condition. *Id.* Dr. Hanson also  
9 noted that the “effects of a conversion disorder on vision and ability to work  
10 should also be investigated.” *Id.* The ALJ found Dr. Hanson’s opinion regarding  
11 whether Plaintiff should be able to work neither valuable nor persuasive. Tr. 23.  
12 The ALJ stated Dr. Hanson’s opinion that Plaintiff’s lack of stereo vision may  
13 make some situations more dangerous is incorporated in the RFC. *Id.*

14 Plaintiff argues the ALJ erred because the RFC does not fully address the  
15 limitations set forth by Dr. Hanson. ECF No. 17 at 19-20. Plaintiff argues Dr.  
16 Hanson’s opinion was limited to the ocular perspective and not Plaintiff’s  
17 conversion disorder. *Id.* Tr. 23. As the case is being remanded for the ALJ to  
18 reconsider Dr. Jahnke’s opinion, the ALJ is also instructed to reconsider Dr.  
19 Hanson’s opinion.

1           3. *Marja Adair, ARNP*

2           In January 2019, Ms. Adair, Plaintiff's primary care provider, rendered two  
3 opinions on Plaintiff's functioning. On January 24, 2019, Ms. Adair wrote a letter  
4 regarding Plaintiff's functioning. Tr. 455. Ms. Adair stated Plaintiff cannot work  
5 in orchards due to a chronic eye condition; he must change positions frequently  
6 throughout the day; and he cannot sit for more than 30 minutes at a time due to  
7 pain. *Id.* On January 29, 2019, Ms. Adair completed a questionnaire regarding  
8 Plaintiff's functioning. Tr. 453-54. Ms. Adair stated Plaintiff had been diagnosed  
9 with chronic pain syndrome; lumbar pain with radiation down both legs; thoracic  
10 radiculopathy; and current moderate episodes of depression. Tr. 454. Ms. Adair  
11 opined Plaintiff would miss four or more days of work due to Plaintiff's level of  
12 uncontrolled back pain and mental health. Tr. 454. The ALJ found Ms. Adair's  
13 opinions were not persuasive. Tr. 22-23.

14           As the case is being remanded for the ALJ to reconsider Dr. Jahnke's  
15 opinion, the ALJ is also instructed to reconsider Ms. Adair's opinion.

16           4. *Mary Pine, PA-C*

17           Ms. Pine was also Plaintiff's primary care provider and completed multiple  
18 "activity prescription" forms in connection with Plaintiff's worker's compensation  
19 claim. Tr. 836-39, 841-42, 909. In each form, Ms. Pine stated Plaintiff was not  
20 released to work for month-long periods of time due to his vision impairment. *See*

1 *id.* The ALJ found the activity prescription forms were not persuasive. Tr. 23.

2 As the case is being remanded for the ALJ to reconsider Dr. Jahnke's  
3 opinion, the ALJ is also instructed to reconsider Ms. Pine's opinion.

#### 4 **B. Plaintiff's Symptom Claims**

5 Plaintiff faults the ALJ for failing to rely on reasons that were clear and  
6 convincing in discrediting his symptom claims. ECF No. 17 at 9-15. An ALJ  
7 engages in a two-step analysis to determine whether to discount a claimant's  
8 testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at \*2.  
9 "First, the ALJ must determine whether there is objective medical evidence of an  
10 underlying impairment which could reasonably be expected to produce the pain or  
11 other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted).  
12 "The claimant is not required to show that [the claimant's] impairment could  
13 reasonably be expected to cause the severity of the symptom [the claimant] has  
14 alleged; [the claimant] need only show that it could reasonably have caused some  
15 degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

16 Second, "[i]f the claimant meets the first test and there is no evidence of  
17 malingering, the ALJ can only reject the claimant's testimony about the severity of  
18 the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the  
19 rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations  
20 omitted). General findings are insufficient; rather, the ALJ must identify what

1 symptom claims are being discounted and what evidence undermines these claims.  
2 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Thomas v.*  
3 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently  
4 explain why it discounted claimant’s symptom claims)). “The clear and  
5 convincing [evidence] standard is the most demanding required in Social Security  
6 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*  
7 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

8 Factors to be considered in evaluating the intensity, persistence, and limiting  
9 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,  
10 duration, frequency, and intensity of pain or other symptoms; 3) factors that  
11 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and  
12 side effects of any medication an individual takes or has taken to alleviate pain or  
13 other symptoms; 5) treatment, other than medication, an individual receives or has  
14 received for relief of pain or other symptoms; 6) any measures other than treatment  
15 an individual uses or has used to relieve pain or other symptoms; and 7) any other  
16 factors concerning an individual’s functional limitations and restrictions due to  
17 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at \*7; 20 C.F.R. §§  
18 404.1529(c), 416.929(c). The ALJ is instructed to “consider all of the evidence in  
19 an individual’s record,” to “determine how symptoms limit ability to perform  
20 work-related activities.” SSR 16-3p, 2016 WL 1119029, at \*2.

1 The ALJ found that Plaintiff's medically determinable impairments could  
2 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's  
3 statements concerning the intensity, persistence, and limiting effects of his  
4 symptoms were not entirely consistent with the evidence. Tr. 20.

5 The ALJ's evaluation of Plaintiff's symptom claims, and the resulting  
6 limitations largely relies on the ALJ's assessment of the medical evidence. Having  
7 determined a remand is necessary to readdress the medical source opinions, any  
8 reevaluation must necessarily entail a reassessment of Plaintiff's subjective  
9 symptom claims. Thus, the Court need not reach this issue. *See Hiler v. Astrue*,  
10 687 F.3d 1208, 1212 (9th Cir. 2012) ("Because we remand the case to the ALJ for  
11 the reasons stated, we decline to reach [plaintiff's] alternative ground for  
12 remand.").

13 For the purposes of the remand, the Court notes that multiple pieces of  
14 evidence the ALJ cited to in support of the finding that Plaintiff exaggerated his  
15 symptoms may demonstrate conversion disorder rather than exaggeration, as  
16 discussed *supra*. The ALJ also found that Plaintiff "reported he was able to help  
17 care for his children, pick up their toys, and go out alone." Tr. 21. The ALJ  
18 referenced his earlier discussion of Plaintiff's activities, in which he noted that  
19 Plaintiff reported helping his wife with caring for a toddler and sometimes cleaning  
20

1 up the toddler's messes. Tr. 20. However, the ALJ did not set forth any analysis as  
2 to how these limited activities are inconsistent with Plaintiff's allegations.

3 The ALJ also found that Plaintiff's neurologist, Robert Egan, M.D.,  
4 "proposed a specific treatment plan," and Plaintiff failed to pursue it for "no  
5 apparent reason." Tr. 21. Dr. Egan stated his treatment algorithm involves having  
6 patients return to see him at regular intervals and beginning an antidepressant. Tr.  
7 623. Dr. Egan instructed Plaintiff to return if his vision gets worse and suggested  
8 using artificial tears multiple times per day in his left eye. Tr. 623-24. The records  
9 are not clear whether Dr. Egan suggested Plaintiff return for regular appointments  
10 or to begin an antidepressant.

11 On remand the ALJ is instructed to reconsider Plaintiff symptom claims and  
12 set forth an analysis supported by substantial evidence.

### 13 **C. Step Three**

14 The ALJ found that Plaintiff's impairments and combinations of  
15 impairments did not meet or equal any listings, including Listings 2.02, 2.03, 2.04,  
16 and 12.07. Tr. 19. Plaintiff challenges the ALJ's consideration of Listing 2.02 and  
17 12.07. ECF No. 17 at 5-9.

18 The Listing of Impairments "describes for each of the major body systems  
19 impairments [which are considered] severe enough to prevent an individual from  
20 doing any gainful activity, regardless of his or her age, education or work

1 experience.” 20 C.F.R. §§ 404.1525, 416.925. “Listed impairments are  
2 purposefully set at a high level of severity because ‘the listings were designed to  
3 operate as a presumption of disability that makes further inquiry unnecessary.’ ”  
4 *Kennedy v. Colvin*, 738 F.3d 1172, 1176 (9th Cir. 2013) (citing *Sullivan v. Zebley*,  
5 493 U.S. 521, 532 (1990)). “Listed impairments set such strict standards because  
6 they automatically end the five-step inquiry, before residual functional capacity is  
7 even considered.” *Kennedy*, 738 F.3d at 1176. If a claimant meets the listed  
8 criteria for disability, she will be found to be disabled. 20 C.F.R. §§  
9 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

10 “To meet a listed impairment, a claimant must establish that he or she meets  
11 each characteristic of a listed impairment relevant to his or her claim.” *Tackett*,  
12 180 F.3d at 1099 (emphasis in original); 20 C.F.R. §§ 404.1525(d), 416.925(d).  
13 “To equal a listed impairment, a claimant must establish symptoms, signs and  
14 laboratory findings ‘at least equal in severity and duration’ to the characteristics of  
15 a relevant listed impairment . . . .” *Tackett*, 180 F.3d at 1099 (emphasis in original)  
16 (quoting 20 C.F.R. § 404.1526(a)). “If a claimant suffers from multiple  
17 impairments and none of them individually meets or equals a listed impairment,  
18 the collective symptoms, signs and laboratory findings of all of the claimant’s  
19 impairments will be evaluated to determine whether they meet or equal the  
20 characteristics of any relevant listed impairment.” *Id.* However, “[m]edical



1 equivalence must be based on medical findings,” and “[a] generalized assertion of  
2 functional problems is not enough to establish disability at step three.” *Id.* at 1100  
3 (quoting 20 C.F.R. § 404.1526(a)).

4 The claimant bears the burden of establishing her impairment (or  
5 combination of impairments) meets or equals the criteria of a listed impairment.  
6 *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005). “An adjudicator’s  
7 articulation of the reason(s) why the individual is or is not disabled at a later step in  
8 the sequential evaluation process will provide rationale that is sufficient for a  
9 subsequent reviewer or court to determine the basis for the finding about medical  
10 equivalence at step 3.” Social Security Ruling (SSR) 17-2P, 2017 WL 3928306, at  
11 \*4 (effective March 27, 2017).

12 As the case is being remanded for the ALJ to reconsider Plaintiff’s symptom  
13 claims, as well as to further develop the record, the ALJ is also instructed to  
14 reconsider the step three analysis.

#### 15 **D. Remedy**

16 Plaintiff urges this Court to remand this case but does not request an  
17 immediate award of benefits. ECF No. 17 at 21; ECF No. 19 at 10.

18 “The decision whether to remand a case for additional evidence, or simply to  
19 award benefits is within the discretion of the court.” *Sprague v. Bowen*, 812 F.2d  
20 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*, 761 F.2d 530 (9th Cir. 1985)).

1 When the Court reverses an ALJ’s decision for error, the Court “ordinarily must  
2 remand to the agency for further proceedings.” *Leon v. Berryhill*, 880 F.3d 1041,  
3 1045 (9th Cir. 2017); *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (“the  
4 proper course, except in rare circumstances, is to remand to the agency for  
5 additional investigation or explanation”); *Treichler v. Comm’r of Soc. Sec. Admin.*,  
6 775 F.3d 1090, 1099 (9th Cir. 2014). However, in a number of Social Security  
7 cases, the Ninth Circuit has “stated or implied that it would be an abuse of  
8 discretion for a district court not to remand for an award of benefits” when three  
9 conditions are met. *Garrison*, 759 F.3d at 1020 (citations omitted). Under the  
10 credit-as-true rule, where (1) the record has been fully developed and further  
11 administrative proceedings would serve no useful purpose; (2) the ALJ has failed  
12 to provide legally sufficient reasons for rejecting evidence, whether claimant  
13 testimony or medical opinion; and (3) if the improperly discredited evidence were  
14 credited as true, the ALJ would be required to find the claimant disabled on  
15 remand, the Court will remand for an award of benefits. *Revels*, 874 F.3d at 668.  
16 Even where the three prongs have been satisfied, the Court will not remand for  
17 immediate payment of benefits if “the record as a whole creates serious doubt that  
18 a claimant is, in fact, disabled.” *Garrison*, 759 F.3d at 1021.

19 The Court concludes the record has not been fully developed and further  
20 administrative proceedings would serve a useful purpose to determine the impact

1 of Plaintiff's conversion disorder. As such, the case is remanded for proceedings  
2 consistent with this Order.

3 **CONCLUSION**

4 Having reviewed the record and the ALJ's findings, the Court concludes the  
5 ALJ's decision is not supported by substantial evidence and free of harmful legal  
6 error. Accordingly, **IT IS HEREBY ORDERED:**

7 1. The District Court Executive is directed to substitute Kilolo Kijakazi as  
8 Defendant and update the docket sheet.

9 2. Plaintiff's Motion for Summary Judgment, **ECF No. 17**, is **GRANTED**.

10 3. Defendant's Motion for Summary Judgment, **ECF No. 18**, is **DENIED**.

11 4. The Clerk's Office shall enter **JUDGMENT** in favor of Plaintiff  
12 **REVERSING** and **REMANDING** the matter to the Commissioner of Social  
13 Security for further proceedings consistent with this recommendation pursuant to  
14 sentence four of 42 U.S.C. § 405(g).

15 The District Court Executive is directed to file this Order, provide copies to  
16 counsel, and **CLOSE THE FILE**.

17 DATED August 11, 2022.

18 s/Mary K. Dimke  
19 MARY K. DIMKE  
20 UNITED STATES DISTRICT JUDGE